

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SEVEN NETWORKS, LLC,

Plaintiff

v.

MOTOROLA MOBILITY LLC,

Defendant.

CASE NO. 3:21-cv-1036-N

**UNOPPOSED MOTION FOR LEAVE FOR SEVEN TO AMEND INFRINGEMENT
CONTENTIONS TO ADD A NEW PRODUCT**

I. INTRODUCTION

SEVEN seeks leave to amend its infringement contentions to add the Moto G Play (2024), released after SEVEN last moved to amend its infringement contentions on November 6, 2023. *See* Dkt. 223. Motorola does not oppose this amendment. The Court has previously granted SEVEN's similar requests. *See* Dkt 126; Dkt. 161; Dkt. 232.

II. BACKGROUND

A. SEVEN's Infringement Contentions

On March 29, 2022, SEVEN timely served its P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions. On February 27, 2023, and again on June 9, 2023 and November 6, 2023, the Court granted leave to amend SEVEN's contentions to add newly-released products or otherwise clarify its contentions. Dkt. 126; Dkt. 161; Dkt. 232. On December 18, 2023, SEVEN served its third amended infringement contentions to list additional accused products which were announced and/or released in the U.S. after June 2023 and to clarify its contentions as to the Moto G Stylus 5G. Ex. 2. In its contentions, SEVEN expressly identified certain models of Motorola phones, and also accused any other Motorola phone "with reasonably similar functionality, including any additional Motorola products using" Android versions 6 and later. Ex. 2 at APPX037.

B. The Pertinent Motorola Products

SEVEN seeks to amend its infringement contentions to list the additional accused product Moto G Play (2024).

III. LEGAL STANDARD

Amending infringement contentions may be made upon a showing of good cause. *You too Technologies LLC v. Twitter Inc.*, No. 3:16-CV-00764-N, Dkt. 85 at 3 (N.D. Tex. April 6, 2017)

(Godbey, J.) (citing Am. Misc. Order No. 62 ¶ 3-7). Good cause may include “newly discovered accused instrumentalities.” *Id.* Courts generally consider four factors: “(1) the explanation for the failure to meet the deadline; (2) the importance of the thing that would be excluded; (3) potential prejudice in allowing the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice.” *Id.* (citing N.D. Tex. and E.D. Tex. authority).

IV. ARGUMENT

Good cause exists for SEVEN to amend its infringement contentions. Each of the four factors weighs in favor of amendment, as explained below.

A. “The Explanation for the Failure to Meet the Deadline” Weighs in Favor of Granting Leave

SEVEN did not identify the new Moto G Play (2024) in its prior infringement contentions because this product had not been released or announced at the time. The Court and Local Rules expressly state that good cause may be satisfied when there are “newly discovered accused instrumentalities,” which is precisely the case here. *Youtoo Technologies* at 3; Am Misc. Order No. 62 ¶ 3-7.

B. The Amendment to Add the New Products is Important

The second factor (importance) favors a finding of good cause. Adding the new Motorola phone to SEVEN’s infringement contentions is important because it will enable SEVEN to seek redress for all of Motorola’s infringing acts during the damages window, without having to file separate lawsuits or otherwise exert party and Court resources to resolve disputes that can fairly and efficiently be resolved in this lawsuit. It will also ensure that Motorola is not able to withhold relevant discovery on the ground that certain Motorola handsets are allegedly not accused.

C. There is no Prejudice to Motorola

The third factor (prejudice) also favors a finding of good cause. SEVEN is not seeking to

add or change infringement theories in its infringement contentions, but rather accuses the Moto G Play (2024) under the same theories it has already set forth in its existing contentions. SEVEN alleges that this product infringes in the same way Motorola's other accused products do. This amendment would not materially change the scope of discovery. Motorola will need to provide financial information for the Moto G Play (2024) and supplement its responses to Interrogatory 1. But Motorola will not be required to produce any additional documents about this product, provide any additional depositions about this product, or supplement any other interrogatories unless its interrogatory responses are materially different for the Moto G Play (2024).

D. A Continuance is not Required

The Court need not consider a continuance where, as here, there is no prejudice to the non-moving party. Trial is five months away, on August 12, 2024. Dkt. 243. Fact discovery is still ongoing, and no continuance is necessary. Thus, this weighs in favor of granting leave.

V. CONCLUSION

In light of the foregoing, SEVEN requests that the Court grant it leave to amend its infringement contentions to add the Moto G Play (2024).

Dated: March 20, 2024

Respectfully submitted,

/s/ Samuel F. Baxter

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Kevin Schubert
Kevin Schubert

CERTIFICATE OF CONFERENCE

I hereby certify that on March 18, 2024, Motorola indicated that it did not oppose this motion.

/s/ Kevin Schubert
Kevin Schubert